

## Remarks

### I. Claim Rejections under 35 USC § 103

At page 6, claims 9-19, 21, 24, 25, 27, 28, 29, 31, 31, and 35 are rejected under 35 USC§103(a) as being unpatentable over Memhard et al. (United States patent number 6201859, hereinafter referred to as "Memhard") in view of Chandler et al. (United States patent number 6477491, hereinafter referred to as "Chandler. At item 9, page 15 of the Office Action, claim 26 is rejected under 35 USC§103(a) as being unpatentable over Memhard in view of Chandler and Barnes, Jr (United States patent number 7133837, hereinafter referred to as "Barnes"). At item 10, page 16 of the Office Action, claim 30 is rejected under 35 USC§103(a) as being unpatentable over Memhard in view of Chandler and Huh (US patent number 6938210, hereinafter referred to as "Huh". At item 11, page 17 of the Office Action, claim 34 is rejected under 35 USC§103(a) as being unpatentable over Memhard in view of Chandler and Cragun (US patent number 6774920, hereinafter referred to as "Cragun").

The Applicants respectfully traverse these rejections because there is no reason to expect that one of ordinary skill in the art would combine Memhard and Chandler in the manner specified by the Examiner. More particularly, as it pertains to independent claims 9, 16, and 31, the Examiner indicates "It would have been obvious to one of ordinary skill in the art common having the teachings of Chandler and Memhard before him at the time the invention was made to modify the determining the identity of the member taught by Memhard to include the preamble from the microphone of Chandler invention, in order to identify the audience member using a preamble from a microphone. *It would have been advantageous for one to utilize such a combination because a wide variety of conventional processes can be used to determine the current speaker as taught by Memhard* (Column 9, lines 6-9)." [Italics and boldface type added by Applicant].

The Applicants respectfully submit that the Examiner is employing the "Obvious To Try" a modification or combination akin to the proverbial "looking for a needle in a haystack". Accordingly, the Applicants respectfully traverse the rejection because the "Obvious To Try" rationale does not provide a prima facie case for obviousness. This is to say that the combination of Memhard and Chandler may provide *some* means of determining

the current speaker, but nothing in these references suggests the particular limitation of the Applicants claimed invention "wherein the determining the identity step further comprises receiving a preamble from a microphone, the preamble being used to identify the audience member", as recited in claims 9, 16, and 31. Neither Memhard nor Chandler includes any teaching that determining the identity of a speaker through the use of a preamble would provide a reasonable expectation of success, or that doing so would provide an advantage over a competing method of determining the identity of speaker.

The Applicants respectfully submit that the Examiner's suggestion that because Memhard suggests that a "wide variety of conventional processes can be used to determine the current speaker" this provides the necessary basis for combining the Memhard reference with Chandler seems closer to hindsight reasoning than the "explicit" analysis required by the Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S. April 30, 2007). In *KSR*, the Court stated that it is "important [for an examiner] to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. The Court indicated that there should be an "explicit" analysis regarding "whether there was an **apparent reason** to combine the known elements in the fashion claimed by the patent at issue." *Id* (boldface type added by Applicant).

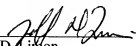
Further, the Court did not reject the use of "teaching, suggestion, or motivation" test as a factor in the obviousness analysis, but rather stated that this test may be indicative of non-obviousness under 35 U.S.C. § 103. *Id.* at 14-15. The Applicant respectfully asserts that there is neither teaching, nor suggestion, nor motivation for one of ordinary skill in the art to modify Memhard to make use of Chandler in order to determine the identity of the speaker in the manner recited in the Applicants' independent claims 9, 16, and 31.

Accordingly, the Applicants respectfully request that the Examiner withdraw the rejection and pass this application onto allowance.

**II. Additional Fees:**

It is not believed that additional fees are due at this time; however, if any additional fee is required in connection with the filing of this Amendment, please charge the fee to Deposit Account No. 08-2025.

Respectfully submitted,  
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